

may be exempt from access by the employee under the Privacy Act or the Freedom of Information Act.

(f) If an individual is directed by the Manager to take specified actions to resolve HRP concerns, he or she must be reevaluated by the HRP management official and HRP certifying official after those actions have been completed. After considering the HRP management and HRP certifying officials' report and recommendation, the Manager must direct either:

- (1) Reinstatement of the individual; or
- (2) Revocation of the individual's HRP certification.

(g) *Notification of Manager's initial decision.* The Manager must send by certified mail (return receipt requested) a written decision, including rationale, to the HRP-certified individual whose certification is revoked. The Manager's decision must be accompanied by notification to the individual, in writing, of the procedures pertaining to reconsideration or a hearing on the Manager's decision.

**§ 712.20 Request for reconsideration or certification review hearing.**

(a) An HRP-certified individual who receives notification of the Manager's decision to revoke his or her HRP certification may choose one of the following options:

- (1) Take no action;
- (2) Submit a written request to the Manager for reconsideration of the decision to revoke certification. The request must include the individual's response to the information that gave rise to the concern. The request must be sent by certified mail to the Manager within 20 working days after the individual received notice of the Manager's decision; or
- (3) Submit a written request to the Manager for a certification review hearing. The request for a hearing must be sent by certified mail to the Manager within 20 working days after the individual receives notice of the Manager's decision.

(b) If an individual requests reconsideration by the Manager but not a certification review hearing, the Manager must, within 20 working days after receipt of the individual's request, send

by certified mail (return receipt requested) a final decision to the individual. This final decision about certification is based on the individual's response and other relevant information available to the Manager.

(c) If an individual requests a certification review hearing, the Manager must forward the request to the Office of Hearings and Appeals.

**§ 712.21 Office of Hearings and Appeals.**

(a) The certification review hearing is conducted by the Office of Hearings and Appeals.

(b) The hearing officer must have a DOE "Q" access authorization when hearing cases involving HRP duties.

(c) An individual who requests a certification review hearing has the right to appear personally before the hearing officer; to present evidence in his or her own behalf, through witnesses or by documents, or by both; and to be accompanied and represented at the hearing by counsel or any other person of the individual's choosing and at the individual's own expense.

(d) In conducting the proceedings, the hearing officer must:

- (1) Receive all relevant and material information relating to the individual's fitness for HRP duties through witnesses or documentation;
- (2) Ensure that the individual is permitted to offer information in his or her behalf; to call, examine, and cross-examine witnesses and other persons who have made written or oral statements, and to present and examine documentary evidence;
- (3) Require the testimony of the individual and all witnesses be given under oath or affirmation; and
- (4) Ensure that a transcript of the certification review proceedings is made.

**§ 712.22 Hearing officer's report and recommendation.**

Within 30 calendar days of the receipt of the hearing transcript by the hearing officer or the closing of the record, whichever is later, the hearing officer must forward written findings, a supporting statement of reasons, and recommendation regarding the individual's eligibility for recertification in

## Department of Energy

## § 712.32

the HRP position to the Chief Health, Safety and Security Officer. The hearing officer's report and recommendation must be accompanied by a copy of the record of the proceedings. The Chief Health, Safety and Security Officer shall forward to the DOE Deputy Secretary a recommendation to either recertify or revoke the certification of an individual in the HRP.

[69 FR 3223, Jan. 23, 2004, as amended at 71 FR 68731, Nov. 28, 2006]

### § 712.23 Final decision by DOE Deputy Secretary.

Within 20 working days of the receipt of the Chief Health, Safety and Security Officer's recommendation, the Deputy Secretary should issue a final written decision. A copy of this decision must be sent by certified mail (return receipt requested) to the Manager and to the individual accompanied by a copy of the hearing officer's report and the transcript of the certification review proceedings.

[69 FR 3223, Jan. 23, 2004, as amended at 71 FR 68731, Nov. 28, 2006]

## Subpart B—Medical Standards

### § 712.30 Applicability.

This subpart establishes standards and procedures for conducting medical assessments of DOE and DOE contractor individuals in HRP positions.

### § 712.31 Purpose.

The standards and procedures set forth in this subpart are necessary for DOE to:

- (a) Identify the presence of any mental/personality disorders, physical, or behavioral characteristics or conditions that present or are likely to present an unacceptable impairment in reliability;
- (b) Facilitate the early diagnosis and treatment of disease or impairment and foster accommodation and rehabilitation;
- (c) Determine what functions an HRP-certified individual may be able to perform and to facilitate the proper placement of individuals; and
- (d) Provide for continuing monitoring of the health status of individuals to facilitate early detection and

correction of adverse health effects, trends, or patterns.

### § 712.32 Designated Physician.

(a) The Designated Physician must be qualified to provide professional expertise in the area of occupational medicine as it relates to the HRP.

(b) The Designated Physician must:

- (1) Be a graduate of an accredited school of medicine or osteopathy;
- (2) Have a valid, unrestricted state license to practice medicine in the state where HRP medical assessments occur;
- (3) Have met the applicable HRP instruction requirements; and
- (4) Be eligible for the appropriate DOE access authorization.

(c) The Designated Physician is responsible for the medical assessments of HRP candidates and HRP-certified individuals, including determining which components of the medical assessments may be performed by other qualified personnel. Although a portion of the assessment may be performed by another physician, physician's assistant, or nurse practitioner, the Designated Physician remains responsible for:

- (1) Supervising the evaluation process;
- (2) Interpreting the results of evaluations;
- (3) Documenting medical conditions or issues that may disqualify an individual from the HRP;
- (4) Providing medical assessment information to the Designated Psychologist to assist in determining psychological fitness;
- (5) Determining, in conjunction with DOE if appropriate, the location and date of the next required medical assessment; and
- (6) Signing a recommendation about the medical fitness of an individual for certification or recertification.

(d) The Designated Physician must immediately report to the SOMD any of the following about himself or herself:

- (1) Initiation of an adverse action by any state medical licensing board or any other professional licensing board;
- (2) Initiation of an adverse action by any Federal regulatory board since the last designation;